

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH C. MCKNIGHT,)	3:11-cv-00028-ECR-VPC
)	
Plaintiff,)	
)	
vs.)	<u>Order</u>
)	
JORGA POWERS, et al.,)	
)	
Defendants.)	
)	

On February 13, 2012, the Magistrate Judge filed a Report and Recommendation (#74) recommending that Defendants' Motion to Dismiss (#18) be granted, and Plaintiff's Motion for Summary Judgment (#29) be denied. On February 27, 2012, Plaintiff filed Objections (#76) to the Report and Recommendation (#74). On March 1, 2012, Defendants responded (#77).

The Magistrate Judge recommends that Plaintiff's counts I, III, IV, and VII be dismissed without prejudice as Defendants have met their burden of proving that Plaintiff failed to exhaust his administrative remedies. The Magistrate Judge further recommends that Count II against Defendant Cuddy be dismissed with prejudice as the Court received notice on May 24, 2011 of Defendant Cuddy's death, and a motion for a party substitute has not been made. These claims are the only claims remaining in this action, and therefore,

1 the Magistrate Judge recommends that Plaintiff's complaint be
2 dismissed in its entirety.

3 Plaintiff essentially concedes in his Objections (#76) that he
4 has not shown exhaustion of administrative remedies. He argues,
5 however, that exhaustion was "improperly raised due to plaintiffs
6 [sic] medically documented disabilities, lack of counsel and
7 conditions of confinement" and that the Court should allow him to
8 proceed to the merits of his case. Plaintiff's Objections (#76) are
9 without merit.

10 **IT IS, THEREFORE, HEREBY ORDERED** that the Report &
11 Recommendation (#74) is well-taken, and **APPROVED AND ADOPTED**.
12 Defendants' Motion to Dismiss (#18) is **GRANTED**, and Plaintiff's
13 complaint is dismissed as follows:

14 1) Counts I, III, IV, VII are **DISMISSED WITHOUT PREJUDICE**; and
15 2) Count II against Defendant Cuddy is **DISMISSED WITH**
16 **PREJUDICE**. There are no remaining claims in this action.

17 **IT IS FURTHER ORDERED** that Plaintiff's motion entitled "Request
18 for decision based upon evidence and judgment granting award order"
19 (#29) is **DENIED** as moot.

20 The Clerk shall enter judgment accordingly.

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23 DATED: March 15, 2012.

24 
25 UNITED STATES DISTRICT JUDGE
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